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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

STATE OF FLORIDA, *ex rel.* WALTER G. ARNOLD,
Petitioner,

v.

P. B. REVELS, as Judge of The Circuit Court In and For Volusia County, Florida,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

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No. .....

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v.

P. B. REVELS, as Judge of The Circuit Court In and For Volusia County, Florida,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

The petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered in the above-entitled case on December 11, 1957.

Opinion Below.

This cause was an original proceeding in the Supreme Court of Florida in Prohibition. The opinion of the Supreme Court of Florida, attached as part of Appendix B, is reported in 100 So. 2d 51.

Jurisdiction.

The Judgment of the Supreme Court of Florida is dated and was entered December 11, 1957; an order deny-

ing rehearing is dated and was entered February 19, 1958. A copy of this Judgment is attached as part of Appendix B.

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257 (3).

Questions Presented.

1. **Whether the State of Florida, after compelling petitioner to give incriminating evidence against himself under an applicable immunity statute, in a disbarment proceeding, may, through its judiciary, arbitrarily legislate an illegal exception, making such immunity statute inapplicable to the disbarment proceeding and deprive the petitioner of his immunity, contrary to Section I of the Fourteenth Amendment to the Constitution of the United States.**

2. **Whether the action of the State of Florida in compelling the petitioner to give incriminating evidence against himself in a disbarment proceeding and thereafter prosecuting the petitioner criminally on a charge of bribery concerning which he was compelled to give such incriminating evidence, and in refusing to accord to petitioner the immunity granted by Section 932.29, Florida Statutes, violates the due process clause of the Fourteenth Amendment to the Constitution of the United States.**

Constitutional Provision Involved.

Article I, Fourteenth Amendment, Constitution of the United States:

> "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property with-

out due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statutes Involved.

The statutory provisions involved are Sections 454.24, 454.25, 454.26, 932.29 and 838.011, Florida Statutes 1955. They are copied in Appendix A hereto.

Statement of the Case.

On November 30, 1956, the State Attorney filed a criminal information in St. Johns County, Florida, against petitioner, an attorney at law, charging petitioner and another with a statutory crime of bribery. This offense was alleged to have taken place in St. Johns County, Florida, on the date on which the information was filed, viz: November 30, 1956 (R. 25-27). On December 6, 1956, pursuant to a court order, the State Attorney filed in the same Court a motion for disbarment of the petitioner. The motion for disbarment was filed pursuant to Sections 454.24, 454.25 and 454.26, Florida Statutes 1955. This motion for disbarment charged the petitioner with one single act of misconduct, that is, a violation of a statute against bribery, being the identical offense with which petitioner was charged in the criminal information (R. 30-32).

Pursuant to the commands of Section 454.25, Florida Statutes 1955, the petitioner, within the time allowed by law, filed his answer under oath to the motion for disbarment. In his answer, petitioner gave evidence relevant and material and substantially connected with the bribery transaction described in the criminal information and the motion for disbarment (R. 34-35). The evidence contained in the answer was of an incriminating nature. This answer also

furnished information as to transactions occurring in Volusia County, Florida, which were connected with the alleged bribery (R. 35). A copy of petitioner's sworn answer in the disbarment proceeding was served on the State Attorney, and the information and evidence therein contained as to the events which occurred in Volusia County, Florida, were made available and known to the State Attorney (R. 20).

After the service of petitioner's sworn answer as aforesaid on the State Attorney, he, on December 31, 1956, entered a *nolle prosequi* to the criminal information pending against petitioner in St. Johns County, Florida (R. 28). On the same day the State Attorney filed a new criminal information against the petitioner in Volusia County, Florida, charging him with the same offense of bribery, but alleging that the venue of the alleged offense was Volusia County instead of St. Johns County, Florida, and alleging that the date of the alleged offense was November 29, 1956 instead of November 30, 1956, to conform to the information contained in petitioner's sworn answer in the disbarment proceeding (R. 14-16).

At the time the disbarment proceeding was instituted and the answer was filed thereto as required by Section 454.25, Florida Statutes 1955, Section 932.29, Florida Statutes 1955 offering immunity to any person testifying or producing any document before any Court in "any investigation, proceeding or trial, for a violation of any of the statutes of this state (Florida) against bribery • • •", was in full force and effect. Therefore, to the criminal information which had been filed against him in Volusia County, Florida, petitioner filed a motion to quash, setting up and contending that by filing his sworn answer to the disbarment proceeding and giving evidence relevant, material and incriminating as to the alleged bribery transaction, he was

immunized by Section 932.29, Florida Statutes 1955, and to prosecute him further on the information would be in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States (Motion to Quash, R. 17-22).

The lower court denied the petitioner's motion to quash the criminal information and ordered the criminal case set for trial on February 25, 1957 (R. 41).

The petitioner thereafter, and prior to the trial date, filed this original proceeding in the Supreme Court of Florida in prohibition against P. B. Revels, as Judge of the Circuit Court of Volusia County, Florida, to prohibit him from proceeding with the trial or further prosecution of the petitioner under the criminal information filed against him in Volusia County, Florida. Petitioner made the same contention in his suggestion for prohibition in the Supreme Court of Florida as he had made in his motion to quash in the lower Court, that is, that he had been immunized by Section 932.29, Florida Statutes 1955, and to prosecute him further under the criminal information would be in violation of Section 932.29, Florida Statutes 1955, the Constitution of the State of Florida, as well as the Fifth and Fourteenth Amendments to the Constitution of the United States (Suggestion of Writ of Prohibition, R. 1-11).

The Supreme Court of Florida issued a rule *nisi* on petitioner's suggestion for writ of prohibition (R. 58). To the rule *nisi* the respondent, P. B. Revels, filed a motion to quash and a return (R. 6).

The Supreme Court of Florida, on December 11, 1957, entered its opinion and by a four to three decision quashed the rule *nisi*. In the course of the majority opinion and as the foundation thereof, the Court stated:

> "We think this case may be disposed of by a determination of whether the disbarment proceeding

> based on a bribery charge is an 'investigation, proceeding or trial for a violation of any of the statutes of this state against bribery' within the meaning of F. S. Sec. 932.29 F. S. A. We think it clear that the disbarment proceeding is not within the statutory scheme. An alleged act of bribery is the basis upon which rests the proceedings against Arnold for disbarment; nevertheless the proceeding is for disbarment, not for bribery."

Although the express language of Section 932.29 Florida Statutes makes it applicable to "any investigation, proceeding or trial, for a violation of any of the statutes of this state against bribery * * *", the Supreme Court arbitrarily held that it was not applicable to the disbarment proceeding, saying that "the proceeding is for disbarment, not for bribery", although the motion for disbarment is based solely on a violation of one of the State's bribery statutes. The Court, in the course of its opinion, did not mention the constitutional question directly raised by the petitioner in the lower Court in the motion to quash and in the Supreme Court in his suggestion for prohibition.

A petition for rehearing in this cause was duly filed by the petitioner in which he again asserted that to deny him immunity would deprive him of due process of law and equal protection of the laws contrary to the Fourteenth Amendment of the Constitution of the United States. (R. 93). The Supreme Court of Florida on February 19, 1958, without opinion, denied the petition for rehearing (R. 109).

Reasons for Granting the Writ.

Petitioner urges the Court to grant this petition for writ of certiorari to the Supreme Court of Florida for the following reasons:

The decision of the Supreme Court of Florida denying petitioner immunity from prosecution under Section 932.29, Florida Statutes 1955, was a clear denial of the equal protection of the law to petitioner and amounts to the denial of due process of law guaranteed to petitioner under the Fourteenth Amendment of the Constitution of the United States.

The criminal information filed against the petitioner on November 30, 1956, by the State of Florida, charged him with the crime of bribery, that is, violating Section 838.011, Florida Statutes 1955, in offering to the State Attorney in St. Johns County, Florida, a bribe of $2,500.00. With this information pending against the petitioner, the State of Florida acting by and through a judicial officer, the State Attorney, on December 6, 1956, filed a statutory disbarment proceeding against petitioner, charging him with the identical act of bribery set forth in the criminal information and charging the violation of the identical bribery statute, Section 838.011, Florida Statutes 1955. The State of Florida, acting through its judiciary, in filing the motion for disbarment was well aware that petitioner would be compelled under Section 454.25, Florida Statutes 1955 to "file his answer thereto under oath or be held to have confessed the same."

Although the proceeding in which the petitioner was compelled to give his answer might be classified as civil, it was tantamount to forcing an answer in the criminal proceeding pending against him.

Boyd v. *United States*, 116 U. S. 616, 6 S. Ct. 524, 29 L. Ed. 746, involved a similar statute. In that case, the District Attorney filed an information for seizure and forfeiture of certain cases of plate glass. The District Attorney obtained an order requiring the claimants to produce an

invoice for the glass, under an Act of Congress providing that:

> "* * * if the defendant or claimant shall fail or refuse to produce such book, invoice, or paper in obedience to such notice, the allegations stated in the said motion shall be taken as confessed, unless his failure or refusal to produce the same shall be explained to the satisfaction of the court."
>
> *Boyd* v. *United States*, 116 U. S. 616, 6 S. Ct. 524, 527, 29 L. Ed. 746.

The Government contended that this statute was "free from constitutional objection, because it does not authorize the search and seizure of books and papers, but only requires the defendant or claimant to produce them." With respect to which the Court said:

> "That is so: but it declares that if he does not produce them, the allegations which it is affirmed they will prove shall be taken as confessed. This is tantamount to compelling their production, for the prosecuting attorney will always be sure to state the evidence expected to be derived from them as strongly as the case will admit of * * * It is our opinion, therefore, that a compulsory production of a man's private papers to establish a criminal charge against him, or to forfeit his property, is within the scope of the fourth amendment to the constitution, in all cases in which a search and seizure would be, because it is a material ingredient, and effects the sole object and purpose of search and seizure."
>
> *Boyd* v. *United States*, 116 U. S. 616, 6 S. Ct. 524, 527, 528, 29 L. Ed. 746.

In holding that the attempted requirement of production of the invoice was unconstitutional and void, the Court commented upon the fact that the proceeding was not a criminal

proceeding in the strict sense, but said that the Government could not be permitted to obtain admissions of guilt through the processes of civil proceedings any more than it could through criminal processes:

> "If the government prosecutor elects to waive an indictment, and to file a civil information against the claimants,—that is, civil in form,—can he by this device take from the proceeding its criminal aspect and deprive the claimants of their immunities as citizens, and extort from them a production of their private papers, or, as an alternative, a confession of guilt? This cannot be. The information, though technically a civil proceeding, is in substance and effect a criminal one."
>
> *Boyd* v. *United States*, 116 U. S. 616, 6 S. Ct. 524, 534, 29 L. Ed. 746.

This language from the Boyd opinion is peculiarly applicable here where, at the very time the petitioner was required to answer the disbarment motion, a criminal information, based upon the same charge of bribery, was pending against petitioner in the same court.

Absent the immunity statute, Section 932.29, Florida Statutes 1955, petitioner could have invoked his constitutional privilege against self-incrimination guaranteed to him by Section 12 of the Declaration of Rights of the Florida Constitution and the Fifth Amendment to the Constitution of the United States; he could have refused to obey the mandatory provisions of Section 454.25, Florida Statutes, requiring him to answer the disbarment motion under oath. But the immunity statute, Section 932.29, enjoined that

> "No person shall be excused from attending and testifying, or producing any book, paper, or other document before any court upon any investigation,

> proceeding or trial, for a violation of any of the statutes of this state against bribery • • •"

And to make this injunction effective, constitutionally, the immunity statute promised, in return for the testimony or evidence given, that

> "• • • no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise • • •"

Section 932.29, Florida Statutes 1955.

In filing his sworn answer to the motion for disbarment, and by that means giving evidence concerning the bribery transaction therein referred to, the petitioner relied upon decisions of the Supreme Court of Florida establishing that Section 932.29 was applicable to the filing of answers in civil proceedings.

Thus, in *Boynton* v. *State* (Fla. 1954) 75 So. 2d 211, the State of Florida instituted an action to abate a nuisance under the provisions of Section 64.11, Florida Statutes 1951, alleging that the defendants were engaged in operating a lottery and bookmaking business. The State also propounded certain interrogatories to the defendants. The defendants declined to answer the material allegations of the complaint and the interrogatories propounded by the State on the ground that such answers might tend to incriminate them. The Court held that the immunity statute, Section 932.29, Florida Statutes 1951, was applicable to these civil proceedings for the abatement of a nuisance; that by reason of the immunity statute, the defendants were obliged to answer the allegations of the complaint and the interrogatories, and that by so doing the defendants would become

immunized from any criminal prosecution arising out of the transactions involved, and also from any penalty or forfeiture on account of the transactions concerning which they had been obliged by the State to thus give evidence.

In *Hagerty* v. *Southern Bell Telephone & Telegraph Co.*, 145 Fla. 51, 199 So. 570, Hagerty filed a suit in equity to enjoin the telephone company from discontinuing his telephone service. The telephone company answered the bill of complaint, asserting the defendant's right to discontinue the services because of Hagerty's alleged violation of the state gambling laws. The telephone company also propounded certain interrogatories to Hagerty bearing on the nature of his business. Hagerty objected to answering the interrogatories. The Court held, however, that Hagerty could be compelled to answer these interrogatories by reason of the provisions of this immunity statute (then Sec. 8311 C. G. L. 1927), saying:

> "* * * the information sought to be elicited is within the terms of and may be required under Section 8311, Compiled General Laws of 1927."
>
> *Hagerty* v. *Southern Bell Telephone & Telegraph Co.*, 145 Fla. 51, 55, 199 So. 570, 572.

Armed with the information contained in petitioner's sworn answer in the disbarment proceeding, the State Attorney entered a *nolle prosequi* to the criminal information pending against petitioner in St. Johns County, Florida. He immediately filed a second criminal information against petitioner in Volusia County, Florida, charging him with the same offense of bribery, but alleging that the venue of the offense was Volusia County instead of St. Johns County, and that the date of the offense was November 29, 1956 instead of November 30, 1956, to conform to the information contained in petitioner's sworn answer.

The Supreme Court of Florida in declining to apply the plain and simple language of Section 932.29, and uphold the petitioner's immunity, attempted to graft upon the statute an exception to the effect that it did not apply to disbarment proceedings. The Court, by its decision, refused to decide the federal question raised by petitioner at every stage of the proceeding and rested its decision on a so called non-federal ground.

The non-federal ground on which the Florida Supreme Court based its decision is so essentially arbitrary as to be a mere device to attempt to prevent a review of the decision upon the federal question.

If the Florida legislature, after the petitioner had filed his sworn answer, had amended the immunity statute so as to except disbarment proceedings from its terms, the violation of the due process clause of the Fourteenth Amendment would have been obvious. Can the State of Florida, by its judiciary accomplish the same end and not violate the Fourteenth Amendment? This Court in *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673, 50 S. Ct. 451, 74 L. Ed. 1107; *Ettor* v. *Tacoma*, 228 U. S. 148, 33 S. Ct. 428, 57 L. Ed. 773; *First National Bank of Greely* v. *Weld County*, 264 U. S. 450, 44 S. Ct. 385, 68 L. Ed. 784; *Virginia* v. *Rives*, 100 U. S. 313, 25 L. Ed. 667; *Ex Parte Virginia*, 100 U. S. 339, 25 L. Ed. 676; *Powell* v. *Alabama*, 287 U. S. 45, 77 L. Ed. 158, 53 S. Ct. 55 and *Bridges* v. *California*, 314 U. S. 252, 86 L. Ed. 192, 62 S. Ct. 190 answered this question in the negative. The violation of the Fourteenth Amendment may result from judicial construction of an otherwise valid state statute and the federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive, or administrative branch of government. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill, supra; Cole* v. *State of Arkansas*, 333 U. S. 196, 68 S. Ct. 514, 92 L. Ed. 644;

Konigsberg v. *State Bar of California*, 353 U. S. 252, 77 S. Ct. 722, 1 L. Ed. 2d 810; *Shelley* v. *Kraemer*, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161; *Ex Parte Virginia, supra; Virginia* v. *Rives, supra.*

Petitioner does not contend that Section 932.29, Florida Statutes as enacted by the legislature, contravenes the Constitution of the United States. He does contend that the law as applied by the State of Florida in the instant case denies the petitioner of the equal protection of the law as well as due process of law.

It has long been the law that the Fourteenth Amendment covers the unequal enforcement of valid laws, as well as any enforcement of invalid laws. *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 38 S. Ct. 495, 62 L. Ed. 1154; *Concordia Fire Ins. Co.* vs. *Illinois*, 292 U. S. 535, 54 S. Ct. 830, 78 L. Ed. 1411; *East Coast Lumber Terminal* v. *Babylon*, 174 Fed. (2d) 106.

In *Yick Wo* v. *Hopkins*, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220, this Court said:

> "Though the law itself be fair on its face, and impartial in appearance; yet if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this Court in Henderson *v.* Mayor of New York, 92 U. S. 259; Chy Lung *v.* Freeman, 92 U. S. 275; Ex Parte Virginia, 100 U. S. 339; Neal *v.* Delaware, 103 U. S. 370; and Soon Hing *v.* Crowley, supra".

Again, this Court in *Smith* v. *State of Texas*, 311 U. S. 128, 61 S. Ct. 164, 85 L. Ed. 84, held:

> "The fact that the written words of a state's laws hold out a promise that no such discrimination will be practiced is not enough. The Fourteenth Amendment requires that equal protection to all must be given—not merely promised."

The Supreme Court of Florida, in arbitrarily holding that Section 932.29 was not applicable to a disbarment proceeding, not only departed from its holdings in *Boynton* v. *State*, 75 So. 2d 211 and *Hagerty* v. *Southern Bell Telephone & Telegraph Co.*, 145 Fla. 51, 199 So. 570, but departed also from the test formerly used to determine the applicability of the statute. The Supreme Court of Florida had uniformly held in a number of cases, prior to its decision in this case, that if the basis or subject matter of the investigation, proceeding or trial involved any of the five categories of crimes mentioned in Section 932.29, Florida Statutes, then the statute was applicable. The applicability of the statute did not turn on the nature of the proceeding.

In *State ex rel. Mitchell* v. *Kelly* (Fla. 1954), 71 So. 2d 887, at page 892, the Court said:

> "If the subject matter of the investigation • • • had been only a conspiracy to violate the gambling laws, the immunity statute would have had no application, such investigation being only into an offense not specified in and subordinate to the offenses enumerated in the statute. • • • But such was not the situation. The subject matter of the investigation was into gambling activities, including bookmaking and conducting a lottery, being offenses clearly within the statute."

At page 894 of the same case, the Florida Supreme Court said:

> "• • • the five categories of crimes mentioned in the statute determine whether the statute is applicable • • •".

At page 895 of the same case, the Court said:

> "We therefore hold that where a witness is required to testify in an investigation, proceeding or trial, the subject matter of which involves any of the five categories of crimes specifically enumerated in Section 932.29, Florida Statutes 1951, F. S. A., this statute is applicable."

The subject matter test rather than the nature of the proceeding, was also applied by the Supreme Court of Florida in the following cases:

(1) *Wilson* v. *State*, 134 Fla. 390, 184 So. 31, investigation by the county solicitor into subject matter of *gambling;* (2) *State* v. *Hancock*, 146 Fla. 693, 1 So. 2d 609, investigation by State Attorney into subject matter of *larceny* and its kindred offense of embezzlement; (3) *State ex rel. Byer* v. *Willard* (Fla.), 54 So. 2d 179, illegal seizure of private papers by the State and subsequent investigation by the grand jury into subject matter of *gambling;* (4) *Lorenzo* v. *Blackburn* (Fla.), 74 So. 2d 289, investigation by the county solicitor into subject matter of *bribery* and *gambling;* (5) *State ex rel. Mitchell* v. *Kelly* (Fla.), 71 So. 2d 887, grand jury proceeding into subject matter of *gambling* and *conspiracy;* (6) *Boynton* v. *State* (Fla.), 75 So. 2d 211, chancery proceeding to abate a nuisance, subject matter *gambling;* (7) *Florida State Board of Architecture* v. *Seymour* (Fla.), 62 So. 2d 1, investigation by grand jury and state attorney into subject matter of *bribery;* (8) *Hagerty* v. *Southern Bell Telephone & Telegraph Co.*, 145 Fla. 51, 199 So. 570, a chancery proceeding for injunction wherein the subject matter of inquiry was *gambling;* (9) See also *State ex rel. Marshall* v. *Petteway*, 121 Fla. 822, 164 So. 872, investigation by county solicitor into illegal registrations, a subject matter encompassed within Section 104.39 Florida Statutes, another immunity statute dealing with *elections.*

Had the Supreme Court of Florida decided this case against petitioner on the constitutional grounds raised by petitioner in his suggestion for writ of prohibition and in his petition for rehearing, and simply refused to grant petitioner immunity as required by Section 932.29, Florida Statutes, the jurisdiction of this Court to review such a decision would be clear. The question then arises whether or not the Supreme Court of Florida, by arbitrarily making the basis of its decision a non-federal ground, which in substance denies to petitioner the equal protection of the laws of the State of Florida, and denies to him due process of law, can prevent a review of this decision by this Honorable Court. This Court has held in a number of cases where a state court ruling is in effect a denial of the equal protection of the law or a denial of due process of the law and the ruling is based on a non-federal ground having no fair support, this Court will review such decision and correct the error in the judgment under review.

In *Ancient Egyptian Arabic Order of Nobles* v. *Michaux*, 279 U. S. 737, 49 S. Ct. 485, 73 L. Ed. 931, the Court held:

> "The right thus specially set up in the state court is a federal right. Whether it was denied or not given due recognition by the challenged decree, as affirmed, is a question on which the defeated claimants are entitled to invoke the judgment of this court, as is done in their petition for certiorari. And it is our province to inquire, not only whether the right was denied in direct terms, but also whether it was denied in substance and effect by interposing a non-federal ground of decision having no fair support."
>
> *Ancient Egyptian Arabic Order of Nobles* v. *Michaux*, 279 U. S. 737, 744, 745, 49 S. Ct. 485, 488, 73 L. Ed. 931.

In *Oyama* v. *State of California*, 332 U. S. 633, 68 S. Ct. 269, 92 L. Ed. 249, this Court said:

"In approaching cases, such as this one, in which federal constitutional rights are asserted, it is incumbent on us to inquire not merely whether these rights have been denied in express terms, but also whether they have been denied in substance and effect. We must review independently both the legal issues and these factual matters with which they are commingled."

Oyama v. *State of California*, 332 U. S. 633, 636, 68 S. Ct. 269, 270, 92 L. Ed. 249.

In *Enterprise Irrigation District* v. *Farmers Mutual Canal Co.*, 243 U. S. 157, 37 S. Ct. 318, 61 L. Ed. 644, it was held:

"But where the non-Federal ground is so interwoven with the other as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain * * * And this is true also where the non-Federal ground is so certainly unfounded that it properly may be regarded as essentially arbitrary, or a mere device to prevent a review of the decision upon the Federal question."

Enterprise Irrigation District v. *Farmers Mutual Canal Co.*, 243 U. S. 157, 164, 37 S. Ct. 318, 321, 61 L. Ed. 644.

This Court in *Norris* v. *Alabama*, 294 U. S. 587, 55 S. Ct. 579, 79 L. Ed. 1074, stated:

"When a federal right has been specially set up and claimed in a state court, it is our province to inquire not merely whether it was denied in express terms but also whether it was denied in substance and effect. If this requires an examination of evidence, that examination must be made. Otherwise, review by this Court would fail of its purpose in safeguard-

ing constitutional rights. Thus, whenever a conclusion of law of the state court as to a federal right and finding of facts are so intermingled that the latter control the former, it is incumbent upon us to analyze the facts in order that the appropriate enforcement of the federal right may be assured."

Norris v. *Alabama*, 294 U. S. 587, 590, 55 S. Ct. 579, 580, 79 L. Ed. 1074.

To the same effect see *Rogers* v. *Alabama*, 192 U. S. 226, 24 S. Ct. 257, 48 L. Ed. 417; *Davis* v. *Wechsler*, 263 U. S. 22, 44 S. Ct. 13, 68 L. Ed. 143; *Arnold* v. *Panhandle & Santa Fe Railroad Co.*, 353 U. S. 360, 77 S. Ct. 840, 1 L. Ed. 2d 889; *Fiske* v. *State of Kansas*, 274 U. S. 380, 47 S. Ct. 655, 71 L. Ed. 1108; *Ward* v. *Board of County Commissioners of Love County, Oklahoma*, 253 U. S. 17, 40 S. Ct. 419, 64 L. Ed. 751; *Commonwealth of Virginia* v. *Imperial Coal Sales Co., Inc.*, 293 U. S. 15, 55 S. Ct. 12, 79 L. Ed. 171.

Conclusion.

In denying to petitioner his immunity under Section 932.29, the Supreme Court of Florida has departed from the fundamental concepts of Justice. The State should not be permitted to use its immunity laws to extract an incriminating statement from one charged with crime and then, after the statement is made, use its judiciary to deny to the individual the promised immunity. Such a procedure operates to deny due process of law and the equal protection of the laws.

Respectfully submitted,

CHESTER BEDELL,
Counsel for Petitioner.

May 12, 1958.

Appendix A.

Statutory Provisions Involved.

Section 454.24, Florida Statutes 1955 (Vol. 2, p. 1752):

"Whenever it shall be made known to any judge of the circuit court that any attorney-at-law, practicing in any of the courts in his judicial circuit, has been guilty of dishonest conduct, or habits of general immorality, or any such single act of crime or vice as may show him to be unfit for the trusts and confidence reposed in him as an attorney, or of deceit or misconduct in his office of attorney, or of suppressing or attempting to suppress any testimony in any case, or of tampering with any record, or of stirring up litigation, or being drunk while the case under his charge is being considered in court, or any unprofessional acts which unfit him for association with the fair and honorable members of the profession, such judge shall direct the state attorney for the circuit to make in writing a motion, in the name of the state, to disbar such attorney, setting forth in the motion the particular acts or conduct for which the attorney is sought to be disbarred."

Section 454.25, Florida Statutes 1955 (Vol. 2, p. 1752):

"Upon the filing of such motion, a copy thereof shall be served upon the accused attorney, and he shall within three days after the service thereof file his answer thereto under oath or be held to have confessed the same. The time for answering may be enlarged by the judge for sufficient reasons. The accused may at the time of filing his answer demur to the motion upon the ground that the acts or conduct set forth in the motion do not furnish sufficient ground for disbarring him. In case the demurrer is sustained the motion shall be denied."

Section 454.26, Florida Statutes 1955 (Vol. 2, p. 1752):

"Upon the filing of the answer denying the acts or conduct alleged in the motion the court shall hear the evidence and if, in the judgment of the court, the allegations in the motion are sustained by a preponderance of the evidence the motion shall be granted and judgment rendered suspending or disbarring the attorney."

Section 932.29, Florida Statutes 1955 (Vol. 2, p. 2902):

"No person shall be excused from attending and testifying, or producing any book, paper or other document before any court upon any investigation, proceeding or trial, for a violation of any of the statutes of this state against bribery, burglary, larceny, gaming or gambling, or of any of the statutes against the illegal sale of spirituous, vinous or malt liquors, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding."

Section 838.011, Florida Statutes 1955 (Vol. 2, p. 2788):

"Any person who shall corruptly give, offer or promise to any public officer, agent, servant or employee, after the election or appointment or employment of such public officer, agent, servant or employee and either before or after he shall have been qualified or shall take his seat, any commission, gift, gratuity, money, property or other valuable thing, or to do any act beneficial to such public

officer, agent, servant or employee or another, with the intent or purpose to influence the act, vote, opinion, decision, judgment or behavior of such public officer, agent, servant or employee on any matter, question, cause or proceeding which may be pending or may by law be brought before him in his public capacity, or with the intent or purpose to influence any act or omission relating to any public duty of such public officer, agent, servant or employee, or with the intent or purpose to cause or induce such public officer, agent, servant or employee to use or exert or to procure the use or exertion of any influence upon or with any other public officer, agent, servant or employee in relation to any matter, question, cause or proceeding that may be pending or may by law be brought before such other public officer, agent, employee or servant, shall be guilty of the crime of bribery."

Appendix B.

Opinion and Judgment of Supreme Court of Florida.

IN THE SUPREME COURT OF FLORIDA,

JULY TERM, A. D. 1957.

STATE OF FLORIDA, *ex rel.* WALTER G. ARNOLD,
Relator,
vs.
P. B. REVELS, as Judge of the Circuit Court in and for Volusia County, Florida,
Respondent.

Case No. 28,912.

Opinion filed December 11, 1957.

A case of original jurisdiction—Prohibition.

CHESTER BEDELL, for Relator;

RICHARD W. ERVIN, Attorney General and REEVES BOWEN, Assistant Attorney General, for Respondent.

DREW, J.

On the suggestion of Walter G. Arnold this Court issued its rule *nisi* in prohibition, directed to the trial court, to show cause why it should not be prohibited from proceeding further in the prosecution of relator on a charge of bribery. We now consider the matter on respondent's motion to quash and return to the rule.

November 30, 1956 William Judge, state attorney for the seventh judicial circuit, filed an information in St. Johns County against Walter Arnold, a member of The Florida Bar, and another, charging that they did, on November 30, 1956 corruptly offer a bribe of $2,500 to William Judge as

state attorney to influence his official action in connection with the continuance of certain criminal cases then pending in St. Johns County.

On December 6, 1956, the state attorney filed a motion for disbarment of Arnold under Chapter 454 Florida Statutes 1955, charging him with the same act of bribery which was the basis of the November 30th bribery information. Arnold served his sworn answer to the disbarment motion on December 15, 1956. On December 31, 1956 James McEwen, as state attorney (transferred by order of the Governor to act in place of William Judge as state attorney for the bribery investigation), entered a *nolle prosequi* to the November 30th information. On the same day, December 31st, McEwen filed an information in Volusia County charging the same act of bribery, but changing the date from November 30th to November 29th, and changing the place from St. Johns County to Volusia County. Arnold moved to quash the December 31st information for the same basic reasons urged now in this proceeding but the trial judge denied the motion.

Arnold argues that since the disbarment proceeding was based on a charge of bribery and he was required by Sec. 454.25 Florida Statutes 1955 to answer under oath to such charge, his answer disclosing relevant matter which might tend to incriminate him in a criminal prosecution for bribery provided him immunity from such prosecution under Sec. 932.29 Florida Statutes 1955, reading as follows:

> "No person shall be excused from attending and testifying, or producing any book, paper or other document before any court upon any investigation, proceeding or trial, for a violation of any of the statutes of this state against bribery, burglary, larceny, gaming or gambling, or of any of the statutes against the illegal sale of spirituous, vinous or malt liquors, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture

> for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding."

We think this case may be disposed of by a determination of whether the disbarment proceeding based on a bribery charge is an "investigation, proceeding or trial, for a violation of any of the statutes of this state against bribery" within the meaning of Sec. 932.29 F. S. We think it clear that the disbarment proceeding is not within the statutory scheme. An alleged act of bribery is the basis upon which rests the proceeding against Arnold for disbarment; nevertheless the proceeding is for disbarment, not for bribery. In this conclusion we are not making a play on words. The nature of the proceeding in its natural place within the governmental structure of the state is the important factor for purposes of applying the immunity statute. The immunity statute is designed to force revelations from people who would otherwise have available the protection of organic safeguards against self incrimination,—the force being justified in the designated instances by removal of the possibility of resulting prosecutions, penalties or forfeitures which the organic safeguards were designed to prevent. See the historical discussion in *State ex rel. Mitchell* v. *Kelly*, 71 So. 2d 887 (Fla. 1954). In other words the state must be seeking in a given proceeding a particular type of information and using the power of the sovereign to force the desired revelations. The cases in this Court have narrowly construed Sec. 932.29 in situations analogous to the case at bar where the issue has been the *applicability* of the immunity statute rather than the *scope* of the immunity once application is determined. *Johns* v. *State*, 157 Fla. 721, 27 So. 2d 75 (1946); *State ex rel. Benemorsky* v. *Sullivan*, 37 So. 2d 907 (Fla. 1948). In *Johns* v. *State*, *supra*, it was held that a preliminary hearing or investigation upon a charge of murder in the first degree which elicited information from informant about his connection with the conduct of a lottery was not a proceeding under the

terms of Sec. 932.29 which would immunize informant from prosecution for the offense of conducting a lottery. It was held in *State ex rel. Benemovsky* v. *Sullivan, supra,* that an investigation into criminal communism was not the type proceeding to bring about an application of the immunity statute, and therefore, the witness could properly invoke her privilege against self incrimination as a basis for refusing to answer. Although the latter case is not completely analogous, it points out the course which Arnold should have followed, had he desired to refrain from making particular sworn answers to the disbarment motion. He should have invoked his privilege against self incrimination guaranteed by Florida Constitution, Declaration of Rights Sec. 12. See, *Sheiner* v. *State,* 82 So. 2d 657 (Fla. 1955).

Arnold argues that *Hagerty* v. *Southern Bell Telephone & Telegraph Co., Inc.,* 145 Fla. 51, 199 So. 570 (1940) is contrary to the position we adopt, but that case simply held that a party seeking relief in equity must reveal the material facts upon which his relief depends. The dictum that the information could be elicited under what is now Sec. 932.29 must be disregarded. Moreover, the passing remark of a trial judge citing the *Hagerty* case, which is included in *Lewis* v. *Lewis,* 73 So. 2d 72 (Fla. 1954), in a quotation designed to reveal other facts, is not to be treated as authority for relator's contention. In *Boynton* v. *State,* 75 So. 2d 211 (Fla. 1954), also relied on by Arnold, this Court reversed the trial court and thus in effect rejected a position closely analogous to Arnold's, taken by the State to support the action of the trial court. The state contended that the defendants were required to admit or deny each charge in a complaint to enjoin a nuisance and since every allegation pertained to the gambling activities of defendants, Sec. 932.29 applied. Nothing in the opinion in *Boynton* v. *State, supra,* can be interpreted as supporting the contentions made therein by the state.

The rule *nisi* in prohibition is quashed.

THOMAS, THORNAL and O'CONNELL, JJ., concur

TERRELL, C. J., HOBSON and ROBERTS, JJ., dissent

(R. 68-71.)

IN THE SUPREME COURT OF FLORIDA,

JULY TERM A. D. 1957.

Wednesday, December 11, A. D. 1957

STATE OF FLORIDA *ex rel.*
WALTER G. ARNOLD,
Relator,
vs.
P. B. REVELS, as Judge of the Circuit Court in and for Volusia County, Florida,
Respondent.

This cause having heretofore been submitted to the Court on Monday, May 20, 1957, upon Respondent's Motion to Quash and Return and Motion for Issuance of Rule Absolute filed by Relator, and having been duly considered it is ordered by the Court that the Rule Nisi in Prohibition be and the same is hereby quashed.

The Opinion of the Court in this cause prepared by Mr. Justice DREW was this day ordered to be filed.

(R. 73.)